

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Comcast Cable Communications, LLC)	CSR 7926-E, 7927-E, 7928-E, 7929-E,
)	7930-E, 7931-E, 7932-E, 7933-E, 7934-E,
Petitions for Determination of Effective)	7935-E, 7936-E, 7937-E, 7938-E, 7939-E,
Competition in various Indiana Communities)	7940-E, 7941-E, 7942-E, 7943-E, 7944-E,
)	7945-E
)	

MEMORANDUM OPINION AND ORDER

Adopted: May 26, 2010

Released: May 26, 2010

By the Senior Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION AND BACKGROUND

1. Comcast Cable Communications, LLC, hereinafter referred to as “Petitioner,” has filed with the Commission petitions pursuant to Sections 76.7, 76.905(b)(2), 76.905(b)(1) and 76.907 of the Commission’s rules for a determination that Petitioner is subject to effective competition in those communities listed on Attachment A and hereinafter referred to as “Communities.” Petitioner alleges that its cable system serving the communities listed on Attachment B and hereinafter referred to as Group B Communities is subject to effective competition pursuant to Section 623(1) of the Communications Act of 1934, as amended (“Communications Act”)¹ and the Commission’s implementing rules,² and is therefore exempt from cable rate regulation in the Communities because of the competing service provided by two direct broadcast satellite (“DBS”) providers, DirecTV, Inc. (“DirecTV”) and Dish Network (“Dish”). Petitioner additionally claims to be exempt from cable rate regulation in the Communities listed on Attachment C and hereinafter referred to as Group C Communities because the Petitioner serves fewer than 30 percent of the households in the franchise area. The petitions are unopposed.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,³ as that term is defined by Section 623(l) of the Communications Act and Section 76.905 of the Commission’s rules.⁴ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.⁵ For the reasons set forth below, we grant the petitions based on our finding that Petitioner is subject to effective competition in the Communities listed on Attachment A.

¹See 47 U.S.C. § 543(a)(1).

²47 C.F.R. § 76.905(b)(2) and 47 C.F.R. § 76.905(b)(1).

³47 C.F.R. § 76.906.

⁴See 47 U.S.C. § 543(l) and 47 C.F.R. § 76.905.

⁵See 47 C.F.R. §§ 76.906 & 907.

II. DISCUSSION

A. The Competing Provider Test

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if the franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors (“MVPDs”) each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the households in the franchise area;⁶ this test is otherwise referred to as the “competing provider” test.

4. The first prong of this test has three elements: the franchise area must be “served by” at least two unaffiliated MVPDs who offer “comparable programming” to at least “50 percent” of the households in the franchise area.⁷

5. Turning to the first prong of this test, it is undisputed that these Group B Communities are “served by” both DBS providers, DIRECTV and Dish, and that these two MVPD providers are unaffiliated with Petitioner or with each other. A franchise area is considered “served by” an MVPD if that MVPD’s service is both technically and actually available in the franchise area. DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in the franchise area are made reasonably aware of the service’s availability.⁸ The Commission has held that a party may use evidence of penetration rates in the franchise area (the second prong of the competing provider test discussed below) coupled with the ubiquity of DBS services to show that consumers are reasonably aware of the availability of DBS service.⁹ We further find that Petitioner has provided sufficient evidence of DBS advertising in local, regional, and national media that serve the Group B Communities to support its assertion that potential customers in the Group B Communities are reasonably aware that they may purchase the service of these MVPD providers.¹⁰ The “comparable programming” element is met if a competing MVPD provider offers at least 12 channels of video programming, including at least one channel of nonbroadcast service programming¹¹ and is supported in the petitions with copies of channel lineups for both DIRECTV and Dish.¹² Also undisputed is Petitioner’s assertion that both DIRECTV and Dish offer service to at least “50 percent” of the households in the Group B Communities because of their national satellite footprint.¹³ Accordingly, we find that the first prong of the competing provider test is satisfied.

6. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Petitioner asserts that it is the largest MVPD in the Group B Communities.¹⁴ Petitioner sought to

⁶47 U.S.C. § 543(1)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

⁷47 C.F.R. § 76.905(b)(2)(i).

⁸*See* Petitions at 3.

⁹*Mediacom Illinois LLC et al., Eleven Petitions for Determination of Effective Competition in Twenty-Two Local Franchise Areas in Illinois and Michigan*, 21 FCC Rcd 1175 (2006).

¹⁰47 C.F.R. § 76.905(e)(2).

¹¹*See* 47 C.F.R. § 76.905(g). *See also* Petitions at 4.

¹²*See* Petitions at 5 and Exhibit 4.

¹³*See* Petitions at 3.

¹⁴*Id.* at 5. In the Communities of Batesville, Burnettsville, Carroll County, Cass County, Covington, Dearborn County, Dillsboro, Fayette County, Jackson County, Jennings County, Mentone, Milan, Monrovia, Montgomery County, Montpelier, Mooresville, Oldenburg, Paragon, Shelby County, Silver Lake, Thorntown, Veedersburg, and

(continued....)

determine the competing provider penetration in the Group B Communities by purchasing a subscriber tracking report from the Satellite Broadcasting and Communications Association that identified the number of subscribers attributable to the DBS providers within the Group B Communities on a zip code and zip code plus four basis where necessary.¹⁵

7. Based upon the aggregate DBS subscriber penetration levels that were calculated using Census 2000 household data,¹⁶ as reflected in Attachment B, we find that Petitioner has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the Group B Communities. Therefore, the second prong of the competing provider test is satisfied for each of the Group B Communities.

8. Based on the foregoing, we conclude that Petitioner has submitted sufficient evidence demonstrating that both prongs of the competing provider test are satisfied and Petitioner is subject to effective competition in the Group B Communities.

B. The Low Penetration Test

9. Section 623(l)(1)(A) of the Communications Act provides that a cable operator is subject to effective competition if the Petitioner serves fewer than 30 percent of the households in the franchise area; this test is otherwise referred to as the “low penetration” test.¹⁷ Petitioner alleges that it is subject to effective competition under the low penetration effective competition test because it serves less than 30 percent of the households in the franchise area.

10. Based upon the subscriber penetration level calculated by Petitioner, as reflected in Attachment C, we find that Petitioner has demonstrated the percentage of households subscribing to its cable service is less than 30 percent of the households in the Group C Communities. Therefore, the low penetration test is also satisfied as to the Group C Communities.

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Westport both the Comcast penetration figure and the aggregate DBS figure clearly exceed 15 percent. Comcast argues that it is subject to effective competition because in addition to DBS penetration exceeding 15 percent of the occupied households, the number of Comcast subscribers also exceed 15 percent and the Commission has recognized that in such cases the second prong of the competing provider test is satisfied.

¹⁵Petitions at 6-7.

¹⁶*Id.* at 8.

¹⁷47 U.S.C. § 543(l)(1)(A).

III. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that the petitions for a determination of effective competition filed in the captioned proceeding by Comcast Cable Communications, LLC **ARE GRANTED**.

12. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service rates granted to any of the Communities set forth on Attachment A **IS REVOKED**.

13. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.¹⁸

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broecker
Senior Deputy Chief, Policy Division, Media Bureau

¹⁸47 C.F.R. § 0.283.

ATTACHMENT A

CSR(s) 7926-E, 7927-E, 7928-E, 7929-E, 7930-E, 7931-E, 7932-E, 7933-E, 7934-E, 7935-E, 7936-E, 7937-E, 7938-E, 7939-E, 7940-E, 7941-E, 7942-E, 7943-E, 7944-E, 7945-E

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

Communities	CUID(s)
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CSR 7926-E

Crawfordsville	IN0014
Montgomery County	IN0163

CSR 7927-E

Beech Grove	IN0165
Brownsburg	IN0275
Clermont	IN0264
Cumberland	IN0263
Danville	IN0276
Hendricks County	IN0446

Homecroft	IN0447
Indianapolis/Marion	IN0448

	IN0910
	IN0268
	IN0152
	IN0153
	IN0154
	IN0155
	IN0156
	IN0157
	IN0201
	IN0202
	IN0370
	IN0375
	IN0539
	IN0546
	IN0622
	IN0623
	IN0624
	IN1184
Lawrence	IN0132
Mooreville	IN0278
Plainfield	IN0279
Southport	IN0265
Speedway	IN0144
Warren Park	IN0266
Wynnedale	IN0364

CSR 7928-E

Hope	IN0365
Shelby County	IN0133

CSR 7929-E

Bunker Hill	IN0227
Cass County	IN0974
	IN1028
Denver	IN0699
Logansport	IN0029
Miami County	IN0071
Peru	IN0003
Wabash	IN0004
	IN0134

CSR 7930-E

Akron	IN0609
Etna Green	IN0779
Kosciusko County	IN0015
	IN0932
	IN1145
Mentone	IN1143
Silver Lake	IN0905
	IN1043
Warsaw	IN0016

CSR 7931-E

Montpelier	IN0285
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CSR 7932-E

Burlington	IN0587
Camden	IN0922
Clinton County	IN1039
Delphi	IN0019
	IN1033
	IN1110
Flora	IN0294
	IN1107
Rossville	IN0547
Tippecanoe County	IN1031

CSR 7933-E

Covington	IN0013
Fountain County	IN0669

CSR 7934-E

Brookville	IN0131
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CSR 7935-E

Bartholomew County	IN0002
	IN0702
	IN1072
Clifford	IN0684
Columbus	IN0001
Elizabethtown	IN0685
	IN0703

Hartsville	IN1070
Jackson County	IN0169
	IN0639
Jennings County	IN0297
	IN0298
	IN0704
North Vernon	IN0296
Seymour	IN0068
Westport	IN0443
	IN1037

CSR 7936-E

Connersville	IN0057
Fayette County	IN0170

CSR 7937-E

Veedersburg	IN0283
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CSR 7938-E

Batesville	IN0345
	IN0346
Ripley County	IN0347
Oldenburg	IN0348
	IN0349

CSR 7939-E

Brookston	IN0137
Burnettsville	IN0888
Carroll County	IN0173
Chalmers	IN0161
Monon	IN0879
Monticello	IN0038
Remington	IN0049
	IN0883
Reynolds	IN0258
White County	IN0172
	IN0934
	IN1104
	IN1108
	IN1109
	IN1111
Wolcott	IN0286

CSR 7940-E

Boone County	IN0386
Clarks Hill	IN0454
Clinton County	IN0167
	IN0705
	IN0871
Frankfort	IN0138
Thorntown	IN0385
Tippecanoe County	IN0455

CSR 7941-E

Rush County	IN1036
Rushville	IN0123

CSR 7942-E

Aurora	IN0052
Dearborn County	IN0053
	IN0741
Dillsboro	IN0605
Greendale	IN0051
Hidden Valley	IN1136
Lawrenceburg	IN0050
Milan	IN0396
Moores Hill	IN0397
Ohio County	IN1135
Osgood	IN0398
Ripley County	IN0400
Rising Sun	IN0403
Versailles	IN0399

CSR 7943-E

Liberty	IN0444
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CSR 7944-E

Shelby County	IN1015
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CSR 7945-E

Monrovia	IN1083
Morgan County	IN0909
Paragon	IN1183

ATTACHMENT B

CSR(s) 7926-E, 7927-E, 7928-E, 7929-E, 7930-E, 7931-E, 7932-E, 7933-E, 7934-E, 7935-E, 7936-E, 7937-E, 7938-E, 7939-E, 7940-E, 7941-E, 7942-E, 7943-E, 7944-E, 7945-E

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

Communities	CUID(s)	CPR*	2000 Census Households	Estimated DBS Subscribers
<u>CSR 7926-E</u>				
Crawfordsville	IN0014	37.69%	6,117	2,306
Montgomery County	IN0163	44.84%	6,246	2,801
<u>CSR 7927-E</u>				
Beech Grove	IN0165	18.06%	6,085	1,099
Brownsburg	IN0275	36.82%	5,366	1,976
Clermont	IN0264	33.44%	598	200
Cumberland	IN0263	24.82%	2,030	504
Danville	IN0276	46.72%	2,350	1,098
Homecroft	IN0268	17.41%	310	54
Indianapolis/Marion	IN0152 IN0153 IN0154 IN0155 IN0156 IN0157 IN0201 IN0202 IN0370 IN0375 IN0539 IN0546 IN0622 IN0623 IN0624 IN1184	19.07%	321,357	61,277
Lawrence	IN0132	24.18%	14,853	3,591
Mooresville	IN0278	45.03%	3,535	1,592
Plainfield	IN0279	31.07%	7,051	2,191
Southport	IN0265	17.32%	733	127

Speedway	IN0144	17.82%	6,151	1,096
Warren Park	IN0266	15.85%	915	145
Wynnedale	IN0364	19.44%	108	21
<u>CSR 7928-E</u>				
Hope	IN0365	42.38%	788	334
Shelby County	IN0133	47.09%	8,650	4,073
<u>CSR 7929-E</u>				
Bunker Hill	IN0227	28.97%	397	115
Cass County	IN0974 IN1028	39.15%	6,723	2,632
Denver	IN0699	56.08%	189	106
Logansport	IN0029	25.36%	7,604	1,928
Miami County	IN0071	32.12%	7,124	2,288
Peru	IN0003	28.22%	5,410	1,527
Wabash	IN0004 IN0134	29.21%	4,799	1,402
<u>CSR 7930-E</u>				
Etna Green	IN0779	41.45%	234	97
Mentone	IN1143	53.13%	335	178
Silver Lake	IN0905 IN1043	54.58%	207	113
Warsaw	IN0016	37.10%	4,794	1,779
<u>CSR 7931-E</u>				
Montpelier	IN0285	45.26%	802	363
<u>CSR 7932-E</u>				
Burlington	IN0587	51.69%	207	107
Camden	IN0922	42.49%	233	99
Delphi	IN0019 IN1033 IN1110	41.34%	1,161	480
Flora	IN0294 IN1107	35.32%	906	320

Rossville	IN0547	50.27%	555	279
<u>CSR 7933-E</u> Covington	IN0013	60.35%	1,092	659
<u>CSR 7934-E</u> Brookville	IN0131	55.90%	1,145	640
<u>CSR 7935-E</u> Bartholomew County	IN0002 IN0702 IN1072	32.26%	10,583	3,414
Clifford	IN0684	24.77%	109	27
Columbus	IN0001	28.67%	15,985	4,583
Elizabethtown	IN0685 IN0703	47.93%	147	69
Hartsville	IN1070	48.17%	137	66
Jackson County	IN0169 IN0639	41.96%	6,766	2,839
Jennings County	IN0297 IN0298 IN0704	44.64%	7,352	3,282
North Vernon	IN0296	36.93%	2,665	984
Seymour	IN0068	30.20%	7,231	2,184
Westport	IN0443 IN1037	53.30%	606	323
<u>CSR 7936-E</u> Connersville	IN0057	30.43%	6,382	1,942
Fayette County	IN0170	31.91%	3,780	1,206
<u>CSR 7937-E</u> Veedersburg	IN0283	55.37%	921	510
<u>CSR 7938-E</u> Batesville	IN0345 IN0346	39.73%	2,240	890
Oldenburg	IN0348 IN0349	48.37%	215	104

CSR 7939-E

Brookston	IN0137	33.87%	691	234
Burnettsville	IN0888	90.32%	155	140
Carroll County	IN0173	39.98%	5,171	2,067
Chalmers	IN0161	34.05%	185	63
Monon	IN0879	41.90%	642	269
Monticello	IN0038	24.51%	2,268	556
Remington	IN0049 IN0883	36.46%	532	194
Reynolds	IN0258	47.73%	199	95
White County	IN0172 IN0934 IN1104 IN1108 IN1109 IN1111	31.02%	5,195	1,611
Wolcott	IN0286	37.75%	392	148

CSR 7940-E

Clarks Hill	IN0454	37.34%	241	90
Frankfort	IN0138	36.80%	6,279	2,311
Thorntown	IN0385	63.83%	589	376

CSR 7941-E

Rushville	IN0123	41.79%	2,434	1,017
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CSR 7942-E

Aurora	IN0052	35.05%	1,592	558
Dearborn County	IN0053 IN0741	42.74%	10,502	4,489
Dillsboro	IN0605	58.20%	550	320
Greendale	IN0051	26.73%	1,781	476
Hidden Valley	IN1136	26.84%	1,542	414
Lawrenceburg	IN0050	25.54%	1,914	489
Milan	IN0396	62.05%	693	430
Moores Hill	IN0397	62.38%	218	136

Osgood	IN0398	49.56%	668	331
Rising Sun	IN0403	47.11%	1,034	487
Versailles	IN0399	50.81%	746	379
 <u>CSR 7943-E</u>				
Liberty	IN0444	58.31%	858	500
 <u>CSR 7944-E</u>				
Shelby County	IN1015	47.09%	8,650	4,073
 <u>CSR 7945-E</u>				
Monrovia	IN1083	60.68%	234	142
Paragon	IN1183	72.57%	237	172

*CPR = Percent of competitive DBS penetration rate.

ATTACHMENT C

CSR(s) 7926-E, 7927-E, 7928-E, 7930-E, 7932-E, 7933-E, 7935-E, 7938-E, 7939-E, 7940-E, 7941-E, 7942-E, 7944-E, 7945-E

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

Communities	CUID(s)	Franchise Area Households	Cable Subscribers	Penetration Percentage
<u>CSR 7926-E</u> Montgomery County	IN0163	6,246	1,439	23.04%
<u>CSR 7927-E</u> Hendricks County	IN0446 IN0447 IN0448 IN0910	18,673	2,153	11.53%
<u>CSR 7928-E</u> Shelby County	IN0133	8,650	1,556	17.99%
<u>CSR 7930-E</u> Akron	IN0609	404	36	8.91%
Kosciusko County	IN0015 IN0932 IN1145	17,205	2,484	14.44%
Silver Lake	IN0905	207	56	27.05%
<u>CSR 7932-E</u> Clinton County	IN1039	4,472	426	9.53%
Tippecanoe County	IN1031	18,865	517	2.74%
<u>CSR 7933-E</u> Fountain County	IN0669	3,024	76	2.51%
<u>CSR 7935-E</u> Clifford	IN0684	109	29	26.61%
Jackson County	IN0169 IN0639	6,766	1,427	21.09%
Jennings County	IN0297 IN0298	7,352	1,261	17.15%

CSR 7938-E

Batesville	IN0345	2,240	426	19.02%
Oldenburg	IN0348 IN0349	215	64	29.77%
Ripley County	IN0347	5,635	10	0.18%

CSR 7939-E

Carroll County	IN0173	5,171	1,527	29.53%
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CSR 7940-E

Boone County	IN0386	6,832	4	0.06%
Clinton County	IN0167 IN0705 IN0871	4,472	426	9.53%
Thorntown	IN0385	589	141	23.94%
Tippecanoe County	IN0455	18,865	517	2.74%

CSR 7941-E

Rush County	IN1036	4,029	326	8.09%
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CSR 7942-E

Ohio County	IN1135	1,167	103	8.83%
Ripley County	IN0400	5,635	10	0.18%

CSR 7944-E

Shelby County	IN1015	8,650	1,556	17.99%
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CSR 7945-E

Morgan County	IN0909	14,861	1,687	11.35%
Paragon	IN1183	237	40	16.88%